

Overall, hundreds of licenses have been or soon will be awarded and billions of dollars will be raised for the U.S. Treasury through these PCS auctions.

Another new category of services recognized by the FCC is the Low Earth Orbital ("LEO") satellite service. In 1994, the Commission granted one license for so-called "little" LEO systems (below 1 Ghz), and other applications were considered. After allocating 15 Mhz for the "big" LEO systems (above 1 Ghz), the Commission adopted final rules in October 1994 for licensing and operation of big LEO systems. The first three big LEO licenses were granted by the Commission on January 31, 1995.

Rules and applications governing other communications services, such as Commercial Mobile Radio Service ("CMRS") (Part 20 of the FCC Rules), Direct Broadcasting Satellite ("DBS") service (Part 100 of the FCC Rules), and LEC video dialtone, also were adopted by the Commission in 1994 and 1995. For each of these service categories -- as with PCS and LEO services -- the Commission was, and continues to be, engaged in detailed, highly staff-intensive licensing, rulemaking, auctioning, and other proceedings. Moreover, in each instance, providers of these services received major benefits from the Commission, such as allocation of scarce radio spectrum, assignment of satellite orbital slots, and authorizations of service, which in all cases were the direct result of changes in the Commission's rules. Given all these costs incurred and benefits received by providers of these services, it is plain that, pursuant to the factors

specified in the statute, the Commission should have exercised its permissive authority to add these services to its Schedule.

Nonetheless, the FCC has indicated that current applicants and providers of PCS, LEOs, CMRS, DBS, and video dialtone will pay absolutely nothing under the Commission's plans for FY 1995 because "no facilities were authorized on our proposed date for calculating fees, October 1, 1994, to operate in these services or such authorizations are so recent that negligible portion of FTEs are assigned to these services other than for application processing."⁴⁸ As shown above, the Commission's argument ignores the reality that all of these services have utilized scarce Commission resources in 1994 and 1995. LDDS urges the Commission to revisit its tentative decision to exclude these services from the Schedule in FY 1995.

Another category which is excluded from the proposed Schedule is telecommunications equipment manufacturers. Such manufacturers impose costs, and derive benefits, under the Commission's rules, including Part 15 (authorization and verification of licensed and unlicensed radio frequency devices), Part 18 (testing of industrial, scientific, and medical equipment), and Part 68 (registration of terminal equipment connected to the telephone network). These equipment providers should be required to pay their fair share of the regulatory costs they impose on the Commission.

⁴⁸ Notice at para. 13 n.9.; see also para. 44 n.17.

Finally, in comparison to the Common Carrier Services category, it appears that Cable Television Services and Mass Media Services (commercial television stations and commercial radio stations) will not be paying a proportionate share of regulatory fees.⁴⁹ The Commission should reassess its calculations to ensure that it has not over-allocated costs to the Common Carrier Services category vis-a-vis other Service categories.⁵⁰

V. IN ASSESSING ITS COMMON CARRIER FEES, THE COMMISSION HAS NOT PROPERLY APPORTIONED THE FEES AMONG ENTITIES WHICH REQUIRE THE UTILIZATION OF SUBSTANTIALLY MORE REGULATORY RESOURCES

The Commission's proposed Schedule contains two possible methods of assessing regulatory fees on IXCs and other common carriers. Under the first alternative, IXCs would pay 13 cents per customer unit, while the second alternative would require carriers to pay 8 cents per 1000 minutes.⁵¹ The FCC's proposed flat fee on the services provided by every common carrier, however, ignores the fact that some entities impose far more regulatory costs on the Commission than do other entities.

⁴⁹ See Notice at paras. 40-41 (cable television stations pay 13 cents per customer), at para. 32 (commercial television schedule), at para. 29 (commercial radio schedule).

⁵⁰ In particular, the Commission should make any necessary adjustments to the FTEs assigned to the Common Carrier category so that those FCC personnel formally assigned to the Common Carrier Bureau in FY 1995, but loaned on lengthy "details" to other branches such as the Cable Services Bureau and the Wireless Services Bureau, are counted toward the personnel figures for those latter service categories.

⁵¹ Notice at paras. 59-60.

The Commission should adopt a Schedule which distinguishes among groups of regulated entities based on relevant cost factors, and then apportions regulatory fees accordingly.

In particular, there is a huge and obvious distinction between dominant common carriers -- AT&T and the Regional Bell Operating Companies (RBOCs) -- and nondominant carriers. Dominant carriers are considered to possess market power which, in the public interest, requires maximum regulatory oversight. In the case of the RBOCs, this market power is extensive given their local "bottleneck" control over the local exchange networks. As a result of this market power, dominant carriers require far more regulation by the FCC than do nondominant carriers. This regulation necessarily encompasses a number of ongoing and staff-intensive proceedings, including jurisdictional separation procedures (Part 36), uniform cost accounting procedures (Part 32), detailed cost accounting rules for RBOC competitive ventures (Part 64, Subparts G and I), price caps and other forms of regulation of AT&T and RBOC rates (Part 61), LEC access charges (Part 69), and LEC expanded interconnection rules (Part 64, Subpart N). This regulatory oversight does not include a host of other proceedings which involve the regulation of dominant carriers.

Despite the enormous difference between entities in the Common Carrier Services category, the Commission's proposed Schedule makes no distinction in assessing regulatory fees. The smallest interexchange carriers and local exchange carriers will

pay the same regulatory fee -- 13 cents per customer unit -- that AT&T and the seven RBOCs are proposed to pay. Such uniformity, while perhaps administratively facile, does not comport with the statutory requirement that the Commission set fees to recover the costs incurred in carrying out enforcement, policy, and rulemaking proceedings.⁵²

In order to fashion a more equitable fee schedule -- one which makes rational distinctions based on the costs incurred in regulating different types of common carrier entities -- the Commission should look to a variety of objective cost factors in setting its Schedule. For example, the number of tariff transmittals filed by a carrier is indicative of its size and market position, as well as the Commission staff resources necessary to review the tariffs. Another possible measure is the number of rule waiver requests by a carrier, which indicates the extent to which the carrier is regulated by the Commission, as well as the carrier's voluntary decision to occupy FCC staff time and effort in order to have certain rules waived. Other relevant cost factors -- the number of Section 214 Applications possessed by a carrier, the number of enforcement actions taken by the FCC against a carrier -- all are indicative of the true costs that each type of common carrier entity impose on the Commission. LDDS submits that, utilizing each of these measures, it is apparent that dominant carriers call upon far more FCC regulatory resources than nondominant carriers. The proposed revised

⁵² 47 U.S.C. § 159(a).

Schedule should reflect this basic distinction, and assess higher regulatory fees on dominant carriers.

VI. SEVERAL PROVISIONS OF THE COMMISSION'S PROPOSED FEE SCHEDULES FOR INTEREXCHANGE CARRIERS REQUIRE CLARIFICATION

Several provisions of the Commission's proposed fee schedules for IXCs, particularly Alternative One, require clarification so that parties can be certain about the basis upon which they are liable for regulatory fees. Without further explanation, there may be substantial confusion surrounding payphone service and operator service.

Under Alternative One, regulatory fees are assessed on the number of customer units served by the carrier as of December 31, 1994. The proposal states that "[f]or pay telephone service, the number of customer units would be equal to the number of pay telephones used as the basis for pay telephone compensation."⁵³ Under some interpretations, this could mean the interexchange carrier to which a pay telephone is presubscribed must treat that telephone as a separate customer unit in addition to the customer unit it is counting by virtue of the presubscribed line. The Commission should clarify this by saying instead: "For pay telephone owners [or providers], the number of customer" This language would make it clear that only the owner or provider of the pay telephone equipment will count the pay telephone as a customer unit. A pay telephone that is

⁵³ Notice at para. 59.

presubscribed to an IXC would also be counted as a customer unit but only because it represents a presubscribed line.

Confusion could also arise with regard to the method by which OSPs are required to determine the number of their customer units. Alternative One states that "[f]or other switched services, such as . . . operator services not billed to the number from which the call is placed, the number of customer units would equal the number of billing accounts less those accounts already associated with presubscribed lines reported by the carrier."⁵⁴ The term "billing accounts" does not have familiar definition and misapplication of the Commission's method of counting customer units may result, particularly with regard to operator service.

Under some interpretations, the use of billing accounts could result in virtually every single call placed through an OSP being treated as a separate customer unit. For example, if an OSP wins a contract to have all of the New York Port Authority payphones at La Guardia Airport presubscribed to it, every time a traveller places a call using the OSPs service but billed to a carrier other than the OSP (or collect to a telephone not presubscribed to the OSP), it could be said that a separate

⁵⁴ Id. Aside from the billing account issue discussed above, LDDS understands this language to mean that if an IXC is providing operator services in addition to MTS service, each presubscribed line is counted as just one customer unit. In other words, an IXC would not have to count a presubscribed line once for MTS service and then again for operator services. If this understanding is not correct, the proposal should be modified to require just one payment per presubscribed line.

billing account is established. If this is the case, the OSP could be forced to pay \$.13 per call handled. Certainly this cannot be the result the Commission envisioned.

The Commission should clarify the rule to say: "For other switched services, such as . . . operator services not originating or terminating on a line that is presubscribed to the operator service provider or for which a billing account has been established, the number of customer units would equal the number of billing accounts less those accounts already associated with presubscribed lines or billing accounts otherwise reported by the carrier."⁵⁵ LDDS believes that this modification will bring the Commission's proposal closer to the Commission's intent.

VII. THE COMMISSION SHOULD TEST THE FEE STRUCTURE BEFORE IT ESTABLISHES THE RATE TO BE PAID

With a fee structure that may undergo substantial revision and, in any case, is untested, the Commission should test the structure it settles upon before it establishes the rate that will be collected in each category. In other words, after the Commission determines a final fee structure -- except for the fee itself -- the Commission should request industry to file pertinent data pursuant to that fee structure. The Commission can then use the data compiled to calculate the appropriate fees to be assessed. In this manner, the Commission can avoid over or under recovery of the funds that it is required to collect.

⁵⁵ In addition to addressing the concern regarding operator services, the proposed modification also accounts for the double billing of resale discussed in Section II above.


Given the uncertainty surrounding some aspects of the Commission's proposals, LDDS is concerned that IXCs may pay far more than the Commission anticipates. If that is the case, rather than going through lengthy refund proceedings, it would be better to set an appropriate fee initially. Congress established a certain amount of the Commission to recover through its regulatory fees; the Commission should take steps to prevent recovering more than that amount. Testing "demand" before setting the fee is the only method to ensure that over recovery will not occur.

VIII. CONCLUSION

For the reasons stated above, LDDS urges the Commission to revise and clarify its proposed 1995 fee schedule. Doing so in the manner recommended will ensure equity among industry participants and a continuation of the growing competition in the long distance marketplace.

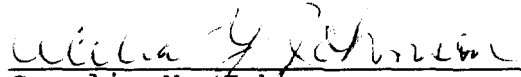
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that on this 13th day of February, 1995, true copies of the foregoing "COMMENTS OF LDDS COMMUNICATIONS, INC." were hand delivered to each of the parties listed below.


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